



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2069

Introduced 2/25/2005, by Sen. Don Harmon - James A. DeLeo - James F. Clayborne, Jr. - Antonio Munoz - Peter J. Roskam, et al.

SYNOPSIS AS INTRODUCED:

New Act

205 ILCS 670/21

720 ILCS 5/17-1a

from Ch. 17, par. 5427

from Ch. 38, par. 17-1a

Creates the Short-term Loan Act to regulate lenders offering short-term loans (defined as deferred presentment loans and title-secured loans). Requires such a lender to notify the borrower that the borrower is entitled to contact the Division of Financial Institutions of the Department of Financial and Professional Regulation concerning debt management services and improprieties concerning the loan. Sets forth standards and requirements concerning the dispersal of loan proceeds, the written loan agreement, cancellation of future payment obligations, electronic funds transfer, and posting of charges. Prohibits a lender from engaging in other types of business if it does so for the purpose of violating the Act and prohibits the lender from engaging in any unfair or deceptive acts, practices, or advertising. Authorizes the borrower to recover undisclosed or excessive charges. Preempts all administrative rules of the Department of Financial and Professional Regulation concerning short-term loans. Establishes specific standards and requirements for both deferred presentment loans and title-secured loans. Amends the Consumer Installment Loan Act. Provides that the provisions of that Act do not apply to short-term loans. Amends the Criminal Code of 1961. In provisions concerning civil liability for deceptive practices, provides that a lender is not entitled to collect damages of treble on an amount owing from a short-term loan. Effective immediately.

LRB094 10041 MKM 40299 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 ARTICLE 1.

5 GENERAL PROVISIONS

6 Section 1-1. Short title. This Act may be cited as the
7 Short-term Loan Act.

8 Section 1-5. Definitions. As used in this Act:

9 "Check" means a personal check, draft, or other negotiable
10 instrument signed by the borrower and made payable to a lender.

11 "Deferred presentment loan" means a transaction pursuant
12 to a written agreement between a lender and the borrower
13 whereby the lender:

14 (1) accepts a check from the borrower;

15 (2) agrees to hold the check for a period of time prior
16 to negotiation or presentment of the check; and

17 (3) pays to the borrower the amount of the check, less
18 a finance charge.

19 "Division" means the Division of Financial Institutions of
20 the Department of Financial and Professional Regulation.

21 "Lender" means any entity offering short-term loans to
22 Illinois residents.

23 "Renew" means to refinance a deferred presentment loan in
24 an amount equal to or less than the unpaid principal of a
25 previous deferred presentment loan with payment in full of
26 interest accrued to date plus any other permissible fees at the
27 time of refinancing.

28 "Short-term loan" means a deferred presentment loan or a
29 title-secured loan.

30 "Title-secured loan" means a non-purchase money loan with
31 an original term of not more than one month wherein, at

1 consummation, a borrower provides to the lender, as security
2 for the loan, physical possession of the borrower's title to a
3 motor vehicle and a security interest in that motor vehicle.

4 Section 1-10. Availability of debt management services.

5 (a) Before entering into a short-term loan agreement, a
6 lender must make available to the borrower a pamphlet created
7 by the Division that describes the availability of debt
8 management services and the borrower's rights and
9 responsibilities in the transaction.

10 (b) Each short-term loan agreement and refinancing
11 agreement executed by a lender shall include the following
12 statement, initialed by the borrower:

13 I have received from (name of lender) a toll-free
14 number for the Division of Financial Institutions of the
15 Department of Financial and Professional Regulation that I
16 can call for information regarding debt management
17 services.

18 (c) Upon conveying any written notice to a borrower
19 indicating the borrower is in arrears or that the borrower is
20 in default with respect to a short-term loan, a lender shall
21 include with the notice a statement indicating a toll free
22 number for the Division that provides the borrower with
23 information from the Division regarding debt management
24 services. The form and method of providing the information
25 shall be determined by the Division by rule.

26 Section 1-15. Borrower's right to contact Division. The
27 loan agreement of any short-term loan shall prominently
28 disclose the Division's address and telephone number and shall
29 advise the borrower that matters involving improprieties in the
30 making of the loan or in loan collection practices may be
31 referred to the Division.

32 Section 1-20. Dispersal of loan proceeds. A lender may
33 issue the proceeds of a short-term loan in the form of (i) a

1 check drawn on the lender's bank account; (ii) cash; (iii) by
2 money order; (iv) a debit card; or (v) an electronic funds
3 transfer. When the proceeds are issued in the form of a check
4 drawn on the lender's bank account or by money order, the
5 lender may not charge a fee for cashing the check or money
6 order if cashing service is offered at the lender's location.
7 When the proceeds are issued in cash, the lender must provide
8 the borrower with a written verification of the cash
9 transaction and shall maintain a record of the transaction.

10 Section 1-25. Written agreement. A short-term loan
11 transaction must be documented by a written agreement signed by
12 the borrower. The written agreement must contain the name of
13 the lender, the transaction date, and a statement of the total
14 amount of fees charged, expressed both as a dollar amount and
15 as an annual percentage rate (APR). With respect to a
16 title-secured loan, the agreement must also contain a
17 description of the motor vehicle being used as collateral,
18 including its year, make, model, and vehicle identification
19 number. With respect to a deferred presentment loan, the
20 written agreement must also authorize the lender to defer
21 presentment or negotiation of the check until a specific date,
22 which may not be later than 60 calendar days after the date of
23 the transaction.

24 Section 1-30. Notice to borrower. A lender providing a
25 short-term loan shall provide the following notice in a
26 prominent place on each short-term loan agreement in at least
27 10-point type:

28 (1) A SHORT-TERM LOAN IS NOT INTENDED TO MEET LONG-TERM
29 FINANCIAL NEEDS.

30 (2) YOU SHOULD USE A SHORT-TERM LOAN ONLY TO MEET
31 SHORT-TERM CASH NEEDS.

32 (3) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST IF
33 YOU RENEW THE SHORT-TERM LOAN RATHER THAN PAY THE DEBT IN
34 FULL WHEN DUE.

1 Section 1-35. Right to cancel future payment obligations.
2 A borrower may cancel future payment obligations under a
3 short-term loan agreement without cost no later than the end of
4 the business day immediately following the day on which the
5 short-term loan was made. To cancel future payment obligations
6 under the short-term loan agreement, the borrower must inform
7 the lender that the borrower wants to cancel the future payment
8 obligations under their short-term loan agreement and must
9 return the uncashed proceeds, check or cash, in an amount equal
10 to the amount financed under the short-term loan agreement.

11 Section 1-40. Electronic funds transfer. A lender offering
12 short-term loans may offer electronic funds transfer services
13 to borrowers. Loan proceeds may be electronically credited to
14 and loan payments may be electronically debited from the
15 borrower's account. No electronic transfers may occur without
16 the prior written approval of the borrower.

17 Section 1-45. Posting of charges. A lender offering
18 short-term loans must post at the point-of-sale a notice of the
19 charges imposed for each type of short-term loan transaction
20 offered. For deferred presentment loan transactions, the
21 notice shall disclose the charges imposed by using as an
22 example a \$300 loan for a 14-day period. For title-secured
23 loans, the notice shall disclose the charges imposed by using
24 as an example a \$500 loan for a 30-day or one month period.

25 Section 1-50. Other types of businesses. A lender may
26 conduct other types of business at a location where it engages
27 in short-term loan transactions unless the lender carries on
28 that business for the purpose of violating this Act.

29 Section 1-55. Unfair or deceptive practices. A lender
30 offering short-term loans may not engage in unfair or deceptive
31 acts, practices, or advertising in connection with a short-term

1 loan transaction.

2 Section 1-60. Undisclosed or excessive charges under
3 short-term loan.

4 (a) Any interest or fees that are undisclosed or in excess
5 of those allowed by law or a short-term loan agreement may be
6 recovered by the borrower in an action at law or as otherwise
7 agreed in writing between the parties.

8 (b) Before pursuing an action or proceeding against a
9 lender concerning a short-term loan, the borrower or the
10 borrower's attorney shall provide the lender with a written
11 notice via certified mail that such an action or proceeding is
12 contemplated and shall specifically identify the type and
13 dollar amount of the interest, fees, or charges of the
14 short-term loan that the borrower contends were undisclosed or
15 excessive. If the lender tenders the excessive or undisclosed
16 interest, fees, or charges to the borrower within 30 days of
17 receipt of such notice, the tender of that amount shall be a
18 complete defense to any further proceedings. If the lender
19 fails to tender a response to the borrower along with all
20 interest and fees that the borrower contends were undisclosed
21 or in excess of those permitted and if the borrower later
22 prevails in a trial or proceeding based upon the undisclosed or
23 excessive charges, the lender shall pay the borrower a penalty
24 of twice the charge proven to be undisclosed or excessive.

25 Section 1-65. Preemption of administrative rules.
26 Administrative rules of the Department of Financial and
27 Professional Regulation related to short-term loans
28 promulgated before the effective date of the this Act are
29 preempted by this Act, including, but not limited to the
30 following: 38 Ill. Adm. Code 110.300, 110.310, 110.320,
31 110.330, 110.340, 110.350, 110.360, 110.370, 110.380, 110.390,
32 110.400, and 110.410.

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ARTICLE 2.

1 DEFERRED PRESENTMENT LOANS

2 Section 2-5. No criminal culpability. A borrower who
3 enters into a deferred presentment loan agreement is not
4 subject to any criminal penalty for entering into that
5 agreement and is not subject to any criminal penalty in the
6 event the borrower's check is dishonored, unless the account on
7 which the check was written was closed on the date of the
8 transaction or before the agreed upon negotiation date.

9 Section 2-10. Authorized fee for dishonored check. If a
10 check written in connection with a deferred presentment loan is
11 returned from a payor financial institution due to insufficient
12 funds, a closed account, or a stop payment order, the lender
13 has the right to exercise all civil means available and
14 allowable by law to collect the face value of the check.
15 Additionally, the lender may contract for and collect a
16 returned check charge not to exceed \$25, plus any court costs,
17 including reasonable attorney's fees, incurred as a result of
18 the returned check. No more than one returned check charge may
19 be assessed in connection with any one deferred presentment
20 loan. No other fees may be collected as a result of a returned
21 check or the default by the maker under a deferred presentment
22 loan agreement.

23 Section 2-15. Redemption of check. A borrower has the
24 right to redeem a check issued in connection with a deferred
25 presentment loan transaction from the lender holding the check
26 at any time before the negotiation or presentment of the check
27 by paying the full amount of the check, less the unearned
28 portion of the finance charge, calculated under the simple
29 interest method, in the form of cash or its equivalent.

30 Section 2-20. Post maturity interest. A lender shall not
31 charge, nor attempt to receive through any other means,
32 post-maturity interest on a deferred presentment transaction.

1 Section 2-25. Loan terms.

2 (a) A deferred presentment loan may not exceed \$2,000 in
3 principal amount. No check held by a lender in connection with
4 a deferred presentment loan may exceed the sum of \$2,000, plus
5 a finance charge.

6 (b) A deferred presentment loan may be renewed no more than
7 3 consecutive times after which either (i) the borrower must
8 pay off the deferred presentment loan in cash or its equivalent
9 or (ii) the lender may deposit the borrower's check. Once the
10 borrower has completed a deferred presentment loan with a
11 lender, the borrower may enter into a new agreement for a
12 deferred presentment loan with that lender. A transaction is
13 completed when (i) a check is presented for payment, deposited,
14 or redeemed by the borrower by paying the full amount of the
15 check to the lender holding the check, less the unearned
16 portion of the finance charge calculated pursuant to the simple
17 interest method or (ii) a debit is made from the borrower's
18 account through an electronic funds transfer.

19 (c) Notwithstanding subsection (b), a borrower may renew a
20 deferred presentment loan more than 3 times if he is provided
21 the opportunity from convert the term of the loan to the
22 Freedom from Debt Plan, as provided in subsection (d).

23 (d) A lender must provide the borrower written notice of
24 the borrower's right to request the Freedom from Debt Plan
25 under the conditions established in this subsection. The form
26 of the written notice shall be specified by the Division by
27 rule.

28 If a borrower renews a deferred presentment loan a fourth
29 time, that fourth renewed loan and each renewed loan thereafter
30 is subject to the opportunity of the borrower to enroll in the
31 Freedom from Debt Plan under the following terms:

32 (1) The borrower must request the Freedom from Debt
33 Plan, in writing, no later than 24 hours before the due
34 date of the deferred presentment loan.

35 (2) The borrower shall be allowed to repay the deferred

1 presentment loan in at least 4 equal installments with at
2 least 13 days between installments.

3 (3) The borrower shall pay a fee not to exceed \$15 for
4 electing the Freedom from Debt Plan.

5 (4) The borrower shall agree not to enter into any
6 additional deferred presentment loan agreements with any
7 lender during the Freedom from Debt Plan term.

8 (e) The post-dated check used as security for a deferred
9 presentment loan must name the lender as payee.

10 (f) The loan agreement for a deferred presentment loan must
11 include a separate statement signed by the borrower attesting
12 that the borrower is not barred from obtaining a deferred
13 presentment loan under this Act.

14 Section 2-30. Security interest; wage assignment. With
15 respect to a deferred presentment loan, a lender may not take a
16 security interest in any of the borrower's personal property
17 other than the borrower's check. A lender may accept a written
18 revocable wage assignment in conjunction with a deferred
19 presentment loan provided it complies with the Illinois Wage
20 Assignments Act.

21 Section 2-35. Multiple outstanding transactions. A
22 borrower may not have more than 2 deferred presentment loans
23 outstanding at the same time whether with a single lender or a
24 combination of lenders. Prior to making a deferred presentment
25 loan, a lender shall inquire of the borrower whether the
26 borrower has any outstanding deferred presentment loans. The
27 lender shall not make a deferred presentment loan to a borrower
28 if the borrower already has 2 outstanding deferred presentment
29 loans. A lender providing a deferred presentment loan can rely
30 on the representation of the borrower if the lender provides
31 the following notice in a prominent place on each loan
32 agreement in at least 10-point type:

33 STATE LAW PROHIBITS YOU FROM HAVING OUTSTANDING, AT ANY
34 ONE TIME, MORE THAN 2 DEFERRED PRESENTMENT LOANS WITH ANY

1 LENDER OR LENDERS. BY SIGNING THIS AGREEMENT YOU CERTIFY
2 THAT YOU WILL NOT, AFTER TAKING OUT THIS LOAN, HAVE MORE
3 THAN 2 OUTSTANDING DEFERRED PRESENTMENT LOANS.

4 ARTICLE 3.

5 TITLE-SECURED LOANS

6 Section 3-5. Limited recourse on title-secured loans.

7 (a) Except as otherwise provided in subsection (b), if a
8 borrower defaults in the repayment of a title-secured loan, the
9 lender's sole remedy is to seek possession and sale of the
10 motor vehicle securing the loan and the lender may not file or
11 maintain any civil action against the borrower personally for
12 repayment of the loan or for any deficiency after sale.
13 Notwithstanding any provision of this Section to the contrary,
14 the lender must return to the borrower any amount obtained
15 after sale of the motor vehicle securing the loan that is in
16 excess of the amount owed on the loan minus any reasonable
17 expenses of repossession and sale.

18 (b) A lender may file and maintain a civil action against a
19 borrower personally for the amount owed under a title-secured
20 loan and exercise all other remedies allowed by law if the
21 borrower:

22 (1) conceals the existence of another lien or interest
23 in the motor vehicle pledged as collateral at the time the
24 loan is made or encumbers or sells the motor vehicle
25 thereafter and deprives the lender of a first priority
26 interest in the collateral; or

27 (2) intentionally damages or conceals the motor
28 vehicle pledged as collateral.

29 Section 3-10. Post-repossession interest. A lender shall
30 not charge interest on a title-secured loan after the lender
31 has obtained possession of a motor vehicle based upon the
32 borrower's default.

1 Section 3-15. Restriction on vehicle dealers. A lender
2 shall not offer or make title-secured loans if the lender is
3 either a motor vehicle dealer or otherwise offers to sell motor
4 vehicles at wholesale or retail. Nothing in this Section
5 prohibits a lender from selling motor vehicles obtained upon
6 default, provided that those vehicles are sold at third-party
7 public or private auctions.

8 Section 3-20. Release of lien.

9 (a) A lender that makes title-secured loans must
10 immediately take into possession evidence of the borrower's
11 ownership in the motor vehicle being used as collateral,
12 including evidence that the vehicle has been registered with
13 the Illinois Secretary of State or the appropriate state agency
14 of any other state, and shall note on the face of the loan
15 agreement the vehicle's make, model, year of manufacture, and
16 vehicle identification number.

17 (b) Within 24 hours after payment in full of the amount due
18 under a title-secured loan, unless the borrower indicates
19 otherwise in writing, the lender must release any liens
20 recorded on the face of the certificate of title and return the
21 title to the borrower or cause the title to be returned to the
22 borrower. If payment has been made by a personal or business
23 check, the lender may delay the release of lien or return of
24 title by 5 business days for the purpose of confirming
25 availability of funds. If the borrower repays the loan before
26 the lender receives the certificate of title back from the
27 governmental agency responsible for recording the lender's
28 lien, the lender shall mail the certificate of title to the
29 borrower within 24 hours of receipt.

30 Section 3-25. Possession of vehicle.

31 (a) A lender may not take possession of a vehicle under a
32 title-secured loan transaction without first giving written
33 notice to the borrower at least 5 days prior to repossession.
34 The notice shall inform the borrower:

1 (1) That the borrower is in default and that, as a
2 result of the default, the borrower's vehicle is subject to
3 repossession at any time after 5 days from the date of the
4 notice.

5 (2) That the borrower has the right to make the vehicle
6 available to the lender before the expiration of the 5-day
7 period at a place, date, and time reasonably convenient to
8 the lender and borrower.

9 (3) That the borrower should remove any personal
10 belongings from the vehicle and, if personal belongings are
11 taken during repossession, the borrower can reclaim them
12 without charge or additional cost.

13 (b) Neither a lender nor any repossession company used by
14 the lender shall charge a borrower any amount or cost to
15 reclaim any of the borrower's personal belongings taken during
16 repossession.

17 (c) A lender may not dispose of a vehicle repossessed under
18 a title-secured loan transaction without complying with
19 Article 9, Part 6 of the Uniform Commercial Code.

20 (d) A lender may not lease a vehicle back to the borrower
21 after the lender has taken possession of a motor vehicle
22 because of a loan default under a title-secured loan
23 transaction.

24 Section 3-30. Maximum loan amount. No lender offering a
25 title-secured loan may allow a borrower to become indebted to
26 the lender in an amount greater than the fair market retail
27 value of the motor vehicle pledged as collateral, as determined
28 by common industry appraisal guides.

29 Section 3-35. Security interest. With respect to a
30 title-secured loan, a lender may not take a security interest
31 in any of the borrower's personal property other than the motor
32 vehicle that is securing the loan.

33 Section 3-40. Multiple outstanding transactions. A

1 borrower may not use the same motor vehicle to secure more than
2 one title-secured loan at the same time. Prior to making a
3 title-secured loan, a lender shall require the borrower to
4 provide a certificate of title free of any other liens or proof
5 that any liens noted on the certificate of title have been
6 released.

7 ARTICLE 90.

8 AMENDATORY PROVISIONS

9 Section 90-5. The Consumer Installment Loan Act is amended
10 by changing Section 21 as follows:

11 (205 ILCS 670/21) (from Ch. 17, par. 5427)

12 Sec. 21. Application of act. This Act does not apply to any
13 person, partnership, association, limited liability company,
14 or corporation doing business under and as permitted by any law
15 of this State or of the United States relating to banks,
16 savings and loan associations, savings banks, credit unions, or
17 licensees under the Residential Mortgage License Act for
18 residential mortgage loans made pursuant to that Act. This Act
19 does not apply to business loans. This Act does not apply to
20 any short-term loan, as defined under Section 1-5 of the
21 Short-term Loan Act.

22 (Source: P.A. 90-437, eff. 1-1-98.)

23 Section 90-10. The Criminal Code of 1961 is amended by
24 changing Section 17-1a as follows:

25 (720 ILCS 5/17-1a) (from Ch. 38, par. 17-1a)

26 Sec. 17-1a. Civil Liability for Deceptive Practices. A
27 person who issues a check or order to a payee in violation of
28 Section 17-1(B) (d) and who fails to pay the amount of the
29 check or order to the payee within 30 days following either
30 delivery and acceptance by the addressee of a written demand by
31 both certified mail and by first class mail to the person's

1 last know address; or attempted delivery of a written demand
2 sent by both certified mail and by first class mail to the
3 person's last known address and the demand by certified mail is
4 returned to the sender with a notation that delivery was
5 refused or unclaimed, shall be liable to the payee or a person
6 subrogated to the rights of the payee for, in addition to the
7 amount owing upon such check or order, damages of treble the
8 amount so owing, but in no case less than \$100 nor more than
9 \$1,500, plus attorney fees and court costs, provided that a
10 lender shall not be entitled to collect damages of treble on an
11 amount owing from a short-term loan, as defined in Section 1-5
12 of the Short-term Loan Act.

13 A cause of action under this Section may be brought in
14 small claims court or in any other appropriate court. As part
15 of the written demand required by this Section, the plaintiff
16 shall provide written notice to the defendant of the fact that
17 prior to the hearing of any action under this Section, the
18 defendant may tender to the plaintiff and the plaintiff shall
19 accept as satisfaction of the claim, an amount of money equal
20 to the sum of the amount of the check and the incurred court
21 costs, and service and attorney fees.

22 (Source: P.A. 89-378, eff. 8-18-95; 90-227, eff. 1-1-98;
23 90-721, eff. 1-1-99.)

24 ARTICLE 95.

25 MISCELLANEOUS PROVISIONS

26 Section 997. Severability. The provisions of this Act are
27 severable under Section 1.31 of the Statute on Statutes.

28 Section 999. Effective date. This Act takes effect upon
29 becoming law.